S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 10, 2016

Introduced by M. of A. CLARK, ENGLEBRIGHT, JAFFEE, SEPULVEDA, McDONOUGH, MILLER, RAIA, COOK, DAVILA, GOTTFRIED, DINOWITZ, SIMON, KEARNS, SCHIMMINGER, JOYNER, COLTON, LIFTON, STECK, GIGLIO, PEOPLES-STOKES, GRAF, OTIS -- Multi-Sponsored by -- M. of A. TITONE -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to enacting the protect vulnerable adults from financial exploitation act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "protect vulnerable adults from financial exploitation act".

S 2. The banking law is amended by adding a new section 9-x to read as follows:

S 9-X. REPORTING OF SUSPECTED FINANCIAL EXPLOITATION. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "AGENT" MEANS ANY PERSON ACTING AT THE DIRECTION OF OR ON BEHALF OF AN INDIVIDUAL OR BUSINESS;

(B) "BROKER-DEALER" MEANS ANY PERSON ENGAGED IN THE BUSINESS OF EFFECTING TRANSACTIONS IN SECURITIES FOR THE ACCOUNT OF OTHERS OR FOR THAT PERSON'S OWN ACCOUNT;

(C) "ELIGIBLE ADULT" MEANS:

(I) A PERSON SIXTY YEARS OF AGE OR OLDER; OR

(II) A PERSON WHO BECAUSE OF MENTAL AND/OR PHYSICAL IMPAIRMENT, IS UNABLE TO MANAGE HIS OR HER OWN RESOURCES, OR PROTECT HIMSELF OR HERSELF FROM FINANCIAL EXPLOITATION.

(D) "FINANCIAL EXPLOITATION" MEANS:

(I) THE WRONGFUL OR UNAUTHORIZED TAKING, WITHHOLDING, APPROPRIATION, OR USE OF MONEY, ASSETS OR PROPERTY OF AN ELIGIBLE ADULT; OR

(II) ANY ACT OR OMISSION TAKEN BY A PERSON, INCLUDING THROUGH THE USE OF A POWER OF ATTORNEY OR GUARDIANSHIP OF AN ELIGIBLE ADULT, TO:

(A) OBTAIN CONTROL, THROUGH DECEPTION, INTIMIDATION OR UNDUE INFLUENCE, OVER THE ELIGIBLE ADULT'S MONEY, ASSETS OR PROPERTY TO DEPRIVE THE ELIGIBLE ADULT OF THE OWNERSHIP, USE, BENEFIT OR POSSESSION OF HIS OR HER MONEY, ASSETS OR PROPERTY; OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) CONVERT MONEY, ASSETS OR PROPERTY OF THE ELIGIBLE ADULT TO DEPRIVE SUCH ELIGIBLE ADULT OF THE OWNERSHIP, USE, BENEFIT OR POSSESSION OF HIS OR HER MONEY, ASSETS OR PROPERTY.

(E) "INVESTMENT ADVISER" MEANS ANY PERSON WHO, FOR COMPENSATION, ENGAGES IN THE BUSINESS OF ADVISING OTHERS, EITHER DIRECTLY OR THROUGH PUBLICATIONS OR WRITINGS, AS TO THE VALUE OF SECURITIES OR AS TO THE ADVISABILITY OF INVESTING IN, PURCHASING, OR SELLING SECURITIES, OR WHO, FOR COMPENSATION AND AS A PART OF A REGULAR BUSINESS, ISSUES OR PROMULGATES ANALYSES OR REPORTS CONCERNING SECURITIES. "INVESTMENT ADVISER" ALSO INCLUDES FINANCIAL PLANNERS AND OTHER PERSONS WHO, AS AN INTEGRAL COMPONENT OF OTHER FINANCIALLY RELATED SERVICES, (I) PROVIDE THE FOREGOING INVESTMENT ADVISORY SERVICES TO OTHERS FOR COMPENSATION AS PART OF A BUSINESS OR (II) HOLD THEMSELVES OUT AS PROVIDING THE FOREGOING INVESTMENT ADVISORY SERVICES TO OTHERS FOR COMPENSATION. INVESTMENT ADVISER SHALL ALSO INCLUDE ANY PERSON WHO HOLDS HIMSELF OR HERSELF OUT AS A FINANCIAL PLANNER.

(F) "QUALIFIED EMPLOYEE" MEANS ANY AGENT, INVESTMENT ADVISER REPRESENTATIVE OR PERSON WHO SERVES IN A SUPERVISORY, COMPLIANCE, OR LEGAL CAPACITY FOR A BROKER-DEALER OR INVESTMENT ADVISER.

2. (A) IF A QUALIFIED EMPLOYEE REASONABLY BELIEVES THAT FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT MAY HAVE OCCURRED, MAY HAVE BEEN ATTEMPTED, OR IS BEING ATTEMPTED, THE QUALIFIED EMPLOYEE SHALL PROMPTLY NOTIFY THE LOCAL SOCIAL SERVICES DISTRICT PROVIDING ADULT PROTECTIVE SERVICES PURSUANT TO SECTION FOUR HUNDRED SEVENTY-THREE OF THE SOCIAL SERVICES LAW AND THE SUPERINTENDENT OF FINANCIAL SERVICES.

(B) A QUALIFIED EMPLOYEE THAT IN GOOD FAITH AND EXERCISING REASONABLE CARE MAKES A DISCLOSURE OF INFORMATION PURSUANT TO THIS SUBDIVISION SHALL BE IMMUNE FROM ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE ARISE FROM SUCH DISCLOSURE OR FOR ANY FAILURE TO NOTIFY THE CUSTOMER OF THE DISCLOSURE.

3. (A) IF A QUALIFIED EMPLOYEE REASONABLY BELIEVES THAT FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT MAY HAVE OCCURRED, MAY HAVE BEEN ATTEMPTED, OR IS BEING ATTEMPTED, A QUALIFIED EMPLOYEE MAY NOTIFY ANY THIRD PARTY PREVIOUSLY DESIGNATED BY THE ELIGIBLE ADULT. DISCLOSURE MAY NOT BE MADE TO ANY DESIGNATED THIRD PARTY THAT IS SUSPECTED OF FINANCIAL EXPLOITATION OR OTHER ABUSE OF THE ELIGIBLE ADULT.

(B) A QUALIFIED EMPLOYEE THAT, IN GOOD FAITH AND EXERCISING REASONABLE CARE, COMPLIES WITH THIS SUBDIVISION SHALL BE IMMUNE FROM ANY ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE ARISE FROM SUCH DISCLOSURE.

4. (A) A BROKER-DEALER OR INVESTMENT ADVISER MAY DELAY A DISBURSEMENT FROM AN ACCOUNT OF AN ELIGIBLE ADULT OR AN ACCOUNT ON WHICH AN ELIGIBLE ADULT IS A BENEFICIARY IF:

(I) THE BROKER-DEALER, INVESTMENT ADVISER, OR QUALIFIED EMPLOYEE REASONABLY BELIEVES THAT THE REQUESTED DISBURSEMENT WILL RESULT IN FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT; AND

(II) THE BROKER-DEALER OR INVESTMENT ADVISER:

(A) IMMEDIATELY, BUT IN NO EVENT MORE THAN TWO BUSINESS DAYS AFTER THE REQUESTED DISBURSEMENT PROVIDES WRITTEN NOTIFICATION OF THE DELAY AND THE REASON FOR THE DELAY TO ALL PARTIES AUTHORIZED TO TRANSACT BUSINESS ON THE ACCOUNT, UNLESS ANY SUCH PARTY IS REASONABLY BELIEVED TO HAVE ENGAGED IN SUSPECTED OR ATTEMPTED FINANCIAL EXPLOITATION OF THE ELIGIBLE ADULT;

(B) IMMEDIATELY, BUT IN NO EVENT MORE THAN TWO BUSINESS DAYS AFTER THE REQUESTED DISBURSEMENT, NOTIFIES THE AGENCIES REQUIRED IN SUBDIVISION TWO OF THIS SECTION; AND

(C) IMMEDIATELY INITIATES AN INTERNAL REVIEW OF THE SUSPECTED OR ATTEMPTED FINANCIAL EXPLOITATION OF THE ELIGIBLE ADULT AND REPORTS ANY RESULTS TO THE AGENCIES REQUIRED TO BE NOTIFIED IN SUBDIVISION TWO OF THIS SECTION WITHIN SEVEN BUSINESS DAYS.

(B) ANY DELAY OF A DISBURSEMENT AS AUTHORIZED BY THIS SECTION WILL EXPIRE UPON THE SOONER OF:

(I) A DETERMINATION BY THE BROKER-DEALER OR INVESTMENT ADVISER THAT THE DISBURSEMENT WILL NOT RESULT IN FINANCIAL EXPLOITATION OF THE ELIGIBLE ADULT; OR

(II) TEN BUSINESS DAYS AFTER THE DATE ON WHICH THE BROKER-DEALER OR INVESTMENT ADVISER FIRST DELAYED DISBURSEMENT OF THE FUNDS, UNLESS EITHER OF THE AGENCIES REQUESTS THAT THE BROKER-DEALER OR INVESTMENT ADVISER EXTEND THE DELAY, IN WHICH CASE THE DELAY SHALL EXPIRE NO MORE THAN TWENTY BUSINESS DAYS AFTER THE DATE ON WHICH THE BROKER-DEALER OR INVESTMENT ADVISER FIRST DELAYED DISBURSEMENT OF THE FUNDS UNLESS SOONER TERMINATED BY EITHER OF THE AGENCIES OR AN ORDER OF A COURT OF COMPETENT JURISDICTION.

(C) A COURT OF COMPETENT JURISDICTION MAY ENTER AN ORDER EXTENDING THE DELAY OF THE DISBURSEMENT OF FUNDS OR MAY ORDER OTHER PROTECTIVE RELIEF.

5. A BROKER-DEALER OR INVESTMENT ADVISER THAT, IN GOOD FAITH AND EXERCISING REASONABLE CARE, COMPLIES WITH SUBDIVISION FOUR OF THIS SECTION SHALL BE IMMUNE FROM ANY ADMINISTRATIVE OR CIVIL LIABILITY THAT MIGHT OTHERWISE ARISE FROM SUCH DELAY IN A DISBURSEMENT IN ACCORDANCE WITH THIS SECTION.

6. A BROKER-DEALER OR INVESTMENT ADVISER MAY PROVIDE ACCESS TO OR COPIES OF RECORDS THAT ARE RELEVANT TO THE SUSPECTED OR ATTEMPTED FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT TO AGENCIES CHARGED WITH ADMINISTERING STATE ADULT PROTECTIVE SERVICES LAWS AND TO LAW ENFORCEMENT, EITHER AS PART OF A REFERRAL TO THE AGENCY OR TO LAW ENFORCEMENT, OR UPON REQUEST OF THE AGENCY OR LAW ENFORCEMENT PURSUANT TO AN INVESTIGATION. THE RECORDS MAY INCLUDE HISTORICAL RECORDS AS WELL AS RECORDS RELATING TO THE MOST RECENT TRANSACTION OR TRANSACTIONS THAT MAY COMPRISE FINANCIAL EXPLOITATION OF AN ELIGIBLE ADULT OR THE FINANCIAL IMPAIRMENT OF AN ADULT. ALL RECORDS MADE AVAILABLE TO AGENCIES UNDER THIS SECTION SHALL NOT BE CONSIDERED A PUBLIC RECORD. NOTHING IN THIS PROVISION SHALL LIMIT OR OTHERWISE IMPEDE THE AUTHORITY OF THE DEPARTMENT OF FINANCIAL SERVICES TO ACCESS OR EXAMINE THE BOOKS AND RECORDS OF BROKER-DEALERS AND INVESTMENT ADVISERS AS OTHERWISE PROVIDED BY LAW.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.